No. 12,814

IN THE

United States
Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Appellant
v.
P. J. LYNCH, Appellee

P. J. LYNCH, Appellant
v.
UNITED STATES OF AMERICA, Appellee

On Appeals from the United States District Court for the Eastern District of Washington

BRIEF FOR THE UNITED STATES

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EVERGREEN PRESS, SPOKANE

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OPINION BELOW

There is no opinion in this case but the views of the District Court which heard and decided the cases consolidated in these appeals, are included in a letter dated July 26, 1950. (R. 16-17.)

JURISDICTION

These appeals involve, in the consolidated cases, excess profits taxes in the amount of $34,670.12, declared value excess profits taxes in the amount of $5,637.48, and interest thereon, for the year 1944. (R. 13.) These taxes were assessed against the Washington Fruit & Produce Company which was volun-

tarily liquidated on April 29, 1944, and subsequent thereto the taxes were assessed against P. J. Lynch, and six other persons (R. 148), as transferees of that corporation (R. 12). Payment of the taxes so assessed was made by the transferees on the basis of stock ownership. (R. 12.) The record does not disclose the date on which the claims for refund were filed but they were denied on February 3, 1949 (R. 6), and the suit for refund in the case of P. J. Lynch was filed on April 15, 1949 (R. 3-6), in conformance with Section 3772 of the Internal Revenue Code. The District Court took jurisdiction of the case under 28 U.S.C., Section 1346. Judgment was entered October 30, 1950. (R. 18-19.) Notice of appeal was filed by the United States on December 27, 1950 (R. 19), and by P. J. Lynch on December 28, 1950 (R. 22), pursuant to 28 U.S.C., Section 1291, upon which the jurisdiction of this Court is based.

QUESTION PRESENTED

The appeal of the United States presents the question of whether or not the net proceeds from the sale of a spceified number of boxes of apples, alleged to have been distributed to the stockholders as a dividend in kind, are taxable to the Washington Fruit & Produce Company.

STATUTE INVOLVED

Internal Revenue Code:

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gain, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses,

commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * * (26 U.S.C. 1946 ed., Sec. 22.)

SEC. 115. DISTRIBUTIONS BY CORPORATIONS.

(a) *Definition of Dividend.*—The term "dividend" when used in this chapter * * * means any distribution made by a corporation to its shareholders, whether in money or in other property, (1) out of its earnings or profits accumulated after February 28, 1913, or (2) out of the earnings or profits of the taxable year * * *.

* * * * *

(26 U.S.C. 1946 ed., Sec. 115.)

STATEMENT

This case comes to this Court on cross appeals from a judgment partly in favor of the taxpayer and partly in favor of the United States in a suit brought by the taxpayer to recover his proportionate part of taxes paid as transferee of the Washington Fruit & Produce Company. It was stipulated at the trial of the P. J. Lynch case, No. 386, in the District Court that the evidence taken in that case was to be taken by the court as the evidence in the cases of Marian L. Bloxom, No. 387; Dolores Plath, No. 388; M. Gail Plath, No. 389; M. Gail Plath, Executrix, No. 390; Fred M. Plath, No. 391; and John M. Bloxom, No. 392, against the United States and that the decision in the P. J. Lynch case was to govern the decision in the other cases and all of the cases were consolidated for trial. (R. 144.) In this Court it is stipulated that the

complete transcript of record, including the testimony and exhibits, in the case of *P. J. Lynch v. United States* only need be printed and that the record in the other cases on appeal need not be printed. (R. 148.)

By agreement between the parties this brief will be limited to the issue presented by the appeal of the United States. The facts relating to that issue, as found by the court below and as adduced in evidence, may be summarized as follows:

The Washington Fruit & Produce Company, a corporation, was engaged in the growing, handling, warehousing and marketing of fresh fruits and vegetables. (R. 12.) The taxpayer in this case, and at least four of the other persons concerned with this appeal, were stockholders of that corporation. (R. 74.) The corporation was liquidated on April 29, 1944. (R. 12.)

At a meeting of the stockholders of the corporation held on February 28, 1944, the corporation declared a dividend in kind of a certain lot, 21,977 boxes (R. 12, 47), of apples (R. 29, 91). This so-called dividend in kind was declared for the purpose of obtaining an income tax advantage to the stockholders (R. 97, 101) but it also worked a tax advantage to the corporation (R. 102, 139, 141) and the court below held that to be the primary motive for the declaration of the dividend. (R. 17).

At that same meeting each of the stockholders entered into a contract (R. 33, Ex. 2) with the corporation to dispose of that lot of apples (R. 32, 92) for the then stockholders and account to them on the sale (R. 37, 57, 95). The contract also provided that the corporation was to deduct costs of washing, packing and storing the apples out of the proceeds of their sales. (R. 53.) It was understood at the meeting that if the so-called dividend in kind were declared the stockholders would enter into the contracts for the

sale of the apples by the corporation (R. 49, 98) and the contract was carried out to the letter (R. 33).

On March 4, 1944, the sale of the apples under the contract was begun and they (i.e., 21,977 boxes) were all marketed by the end of April. (R. 47, 64-65.) None of the apples were ever delivered to any of the stockholders and there was no intention to do so (R. 56) because at that time the corporation had sufficient orders on hand so that the sale was accomplished merely by accepting orders (R. 51, 81, 98). This was because of the O.P.A. ceiling and the heavy demands for apples. (R. 73.) The corporation's bookkeeper rendered a statement of receipts and charges made against the stockholders as a settlement sheet of the transaction (R. 35, Ex. 3) and the stockholders were paid the net proceeds (R. 37, 98).

The Commissioner of Internal Revenue ruled that the dividend in kind of the apples by the corporation was not a valid dividend to the stockholders but an attempt by the corporation at the assignment of income which it anticipated would be derived from the sale of the apples; that the sale of the apples by the corporation was a sale on its own account; and that the excess of the sale price over the cost to the corporation was income to it. (R. 12, 13, 16.) The court below held, however, that the declaration of the dividend was a genuine rather than sham transaction and that the fact that it was motivated by a desire to reduce taxes would not render it invalid. (R. 16-17.) The United States has appealed to this Court for a review of that decision and holding. (R. 19-21.)

STATEMENT OF POINTS TO BE URGED

The statement of points relied upon by the United States appears in the record at pages 20-21. It may

be summarized as follows: That the court below erred (1) in concluding that the dividend in kind was a genuine transaction; that the sale of the dividend apples was not made by the corporation and that the proceeds in excess of the corporation's basis did not represent taxable income to it and its finding and conclusion to the contrary is without support in the evidence; and (2) in failing to find that the declaration of the dividend in kind costituted an anticipatory assignment of income by the corporation, so that the assessment of taxes against the stockholders, as transferees of the corporation, was proper and lawful.

SUMMARY OF ARGUMENT

The evidence in this case leaves no doubt that the sale of the dividend apples was intended to be and actually was made by the corporation. That evidence refutes the conclusion of the District Court that the declaraion of the dividend in kind was a genuine transaction. That erroneous conclusion led the District Court into ignoring the now well established rule that the proceeds of the sale of property involved in a dividend in kind is taxed to the declaring corporation where it, before or after the distribution of the property to the stockholders, has arranged for the sale of the property even though the proceeds go to the stockholders. That rule is clearly distinguishable from that which taxes the proceeds of the sale of property involved in a dividend in kind to the stockholders when they have, on their own responsibility, negotiated the sale of the property on their own behalf.

Here the District Court was led away from the applicable rule by the assumption that the declaration, which it held genuine, isolated the corporation from

gain in the sale of the apples. But that assumption ignored the actualities of the whole transaction. The dividend was declared solely for tax avoidance purposes and the District Court so found. Notwithstanding that fact the District Court held for the taxpayer despite authority to the effect that in such an instance a dividend in kind is not a distribution contemplated by the statute. Its validity was nullified by that rule. In substance the whole transaction was a sham for the passage of title in an attempt to defeat taxes upon the corporation.

But regardless of that effect of the dividend, it represented but an anticipatory assignment of income because the corporation had but to accept orders already on hand to derive income from the apples on hand. The dividend and contract of February 28, 1944, was made only because that was a fact. Under well fixed rules of law an anticipatory assignment of income will not relieve the assignor of taxation upon that income when realized and however realized.

ARGUMENT

The Commissioner of Internal Revenue correctly determined that the net proceeds or profit from the sale of the apples was taxable to the corporation.

It is important at the outset to point out that the sale of the dividend apples was intended to be made and was made by the corporation and not in any sense by the stockholders. The corporation's secretary-treasurer testified that at the February 28, 1944, meeting, at which the so-called dividend was declared, the contract for the sale of the apples by the corporation was discussed (R. 49) and signed (R. 32, 92), and that the stockholders then knew that all the corporation had to do was accept orders which were then on

hand for the apples (R. 51). There was a ready market at that time (R. 51), because of a light crop and the ceiling fixed by O.P.A. (R. 73), and it was to the stockholders' advantage to have the corporation sell them (R. 51). That testimony was substantially corroborated by another stockholder (R. 98) who was present at the meeting (R. 91). The apples were never delivered to the stockholders, nor was it intended that they should be (R. 56), but the corporation sometime between March 3, 1944, and the end of the following month (R. 64-65) sold the apples allegedly for the stockholders' account and turned over the net proceeds to them (R. 37, 98).

These facts alone show the error of the District Court in its conclusion that the declaration of the dividend was a genuine transaction and that there had been no prior orders for the apples and no prior sale or arrangements for sale. (R. 17.) There may have been no prior orders for the *specific* lot of apples included in the declared dividend in kind and no specific arrangement for the sale of those apples. Manifestly, there was no prior sale of those apples, otherwise they could not have been included in the dividend lot. There was, however, evidence elicited in the cross-examination of witnesses, that all the corporation had to do was accept orders (R. 51, 98) which were merely awaiting acceptance. That situation is borne out by the fact that the sale of the dividend lot of 21,977 boxes of apples was begun on March 3, 1944, only three days after the dividend was declared, and was completed in April (R. 64-65) with, presumably, the sale of most of them in March. These facts not only rebut, as being without support on the record, the finding and conclusion of the District Court but establish a contrary conclusion which should unavoidably have compelled the consecutive conclusion

that the dividend was not a genuine transaction and that if the conveyance of title to the apples in the sales were made through the stockholders they were a mere conduit. We here make no contention that the declaration of the dividend in kind, in and of itself, resulted in gain to the corporation because the value of the apples had appreciated in its hands. *General Utilities Co. v. Helvering,* 296 U. S. 200; *Commissioner v. Columbia Pacific S. Co.,* 77 F. 2d 759 (C.A. 9th); *Rudco Oil & Gas Co. v. United States,* 82 F. Supp. 746 (C. Cls.). The only question here is whether the corporation realized taxable income from the sale of the apples following the declaration of the dividend.

A. *The incidence of taxation must be determined by the substance of a transaction, as a whole, rather than by its form.*

The rule applicable to this case is that the proceeds of the sale of property involved in a dividend in kind is taxed to the declaring corporation where it, before or after distribution of the property to the stockholders, has arranged for the sale of the property even though the proceeds go to the stockholders. *Commissioner v. Court Holding Co.,* 324 U.S. 331; *Wichita Term. El. Co v. Commissioner,* 162 F. 2d 513 (C. A. 10th); *Fairfield S. S. Corp. v. Commissioner,* 157 F. 2d 321 (C.A. 2d), certiorari denied, 329 U.S. 774; *Hellebush v. Commissioner,* 65 F. 2nd 902 (C.A. 6th). In the *Court Holding Co.* case, *supra,* the corporation, after negotiating for the sale of its property, declined to go through with the sale because it would result in a large tax upon it, and the following day it declared a "liquidating dividend" of the property to its stockholders and deeded it to them. They in turn effectuated the contract made with the pur-

chasers by conveying the property to them. In that case the Supreme Court said (p. 334):

> The incidence of taxation depends upon the substance of a transaction. The tax consequences which arise from gains from a sale of property are not finally to be determined solely by the means employed to transfer legal title. Rather, the transaction must be viewed as a whole, and each step, from the commencement of negotiations to the consummation of the sale, is relevant. A sale by one person cannot be transformed for tax purposes into a sale by another by using the latter as a conduit through which to pass title.

In the *Wichita Term. El. Co.* case, *supra*, the corporation was held to be taxable on the gain on the sale of property where its president, who, with his family, owned a large part of the stock of the corporation, negotiated the sale and consummated it after the property was conveyed to him as "agent for the former stockholders", dissolution of the corporation having taken place in advance of the conveyance. It was held that the president had negotiated the sale for the corporation. In that case, decided after the *Court Holding Co.* case, *supra*, the court said (p. 515):

> The transaction as a whole was cast in the form of conveyances of the properties of the corporation to Powell, as a liquidating dividend, dissolution of the corporation, and conveyances of the properties to the ultimate purchaser. The formal documents were molded in that pattern. The naked legal title passed from the corporation to Powell, and from Powell to the ultimate purchaser. And Powell was designated or referred to as agent for the former stockholders of the corporation. But in a case of this kind involving questions of liability for income taxes, the form of the transaction is not necessarily conclusive. The formal written documents are not always in-

> flexibly binding. *Helvering v. F. R. Lazarus & Co.*, 308 U.S. 252, 60 S. Ct. 209, 84 L. Ed. 226. Income taxes cannot be avoided by methods, devices, anticipatory arrangements, or contracts which merely give illfounded complexion to the reality of a transaction in its relation to tax liability. *Lucas v. Earl*, 281 U.S. 111, 50 S. Ct. 241, 74 L. Ed. 731; *Griffiths v. Helvering, Commissioner*, 308 U.S. 355, 60 S. Ct. 277, 84 L. Ed. 319.

In the *Hellebush* case, *supra*, decided several years prior to the *Court Holding Co.* case, *supra*, where the property of the corporation was conveyed to the purchasers by trustees for the stockholders, after negotiations for its sale by one of its officers and decision of the stockholders to dissolve and liquidate the corporation, the gain on the sale was taxed to the corporation. In so holding the court said (pp. 903-904):

> We think it is clear that there was no distribution in kind, in the sense of a division, of the assets * * *. Neither was there any distribution in kind to the stockholders "upon dissolution" * * *. We think that this was a sale by one company to the other upon the profits of which the government was entitled to its taxes.

Compare also *Commissioner v. First State Bank*, 168 F. 2d 1004 (C.A. 5th), certiorari denied, 335 U.S. 867.

The rule of the foregoing cases is plainly distinguishable from that which holds that where a corporation declares and pays a dividend in kind and the stockholders upon their own responsibility negotiate a sale of the property in their own behalf, no gain results to the corporation. *United States v. Cumberland Pub. Serv. Co.*, 338 U.S. 451; *United States v. Cummins Distilleries Corp.*, 166 F. 2d 17 (C.A. 6th); *Howell Turpentine Co. v. Commissioner*, 162 F. 2nd 319 (C.A. 5th). It is, however, noteworthy that the Supreme Court in the *Cumberland Pub. Serv. Co.* case

supra, in which it distinguished the *Court Holding Co.* case on the ground we here point out, said the language in the *Court Holding Co.* case, which we have quoted above (pp. 454-455)—

> * * * does not mean that a corporation can be taxed even when the sale has been made by its stockholders following a genuine liquidation and dissolution. While the distinction between sales by a corporation as compared with distribution in kind followed by shareholder sales may be particularly shadowy and artificial when the corporation is closely held, Congress has chosen to recognize such a distinction for tax purposes. *The corporate tax is thus aimed primarily at the profits of a going concern.* (Italics supplied.)

In this connection it is pertinent to point out that the alleged dividend of February 28, 1944, in the instant case was not a liquidating dividend. What has happened is that the corporation took its stock in trade and allegedly distributed it to its stockholders as a dividend and thereafter continued to operate its business until April 29, 1944. (R. 11, 12.) The "going concern" referred to in the *Cumberland Pub. Serv. Co.* case, *supra,* at the profits of which corporate taxes are aimed is thus present here.

Under the facts adduced in evidence in this case, which we have heretofore discussed, it is clear we submit that the proceeds from the sale of the apples were taxable to the Washington Fruit & Produce Company and that the District Court was in error in not so deciding. We submit that in not so deciding the District Court considered that the dividend in kind was declared in advance of the arrangement for the sale of the apples and was, therefore, genuine, and insulated the corporation from the gain in the sale. That view of the situation ignores the actualities of

the whole transaction. The contract for the sale of the apples was made at the same meeting at which the dividend was declared; it was known at that time that the apples were or could be sold merely by accepting orders which were already on hand; and the testimony was unequivocal that the dividend was declared only for the purpose of accomplishing a tax advantage to the stockholders and to the corporation. The District Court found this as a fact. (R. 17.) The declaration of the dividend thus served no purpose except to avoid taxes. It was thus devoid of reality, was a sham, and should not be recognized for tax purposes. It is not apparent how the District Court could find that as a fact and yet ignore the rule of the *Court Holding Co.* case, *supra*. In that light it seems clear that the dividend fails to meet the definition set out in Section 115(a) of the Internal Revenue Code, *supra*.

That section defines a dividend as a distribution made by a corporation out of profits to its shareholders, whether in money or in other property. However, not every formal distribution made to stockholders by a corporation out of profits is a "distribution" within the meaning of Section 115(a). Under the doctrine of *Gregory v. Helvering,* 293 U.S. 465, the words must be taken to refer to transactions entered into for commercial or industrial purposes, and not to include transactions entered into solely for tax avoidace motives such as the evidence shows, and the District Court found, was the fact in this case. Here, thus, the distribution was utterly devoid of business purpose. In a similar and analogous situation the Court of Appeals for the Second Circuit in *Commissioner v. Transport Trad. & Term. Corp.,* 176 F. 2d 570, certiorari denied, 338 U.S. 955, rehearing denied, 339 U.S. 916, said (p. 572):

> * * * the declaration of the dividend * * * was not the kind of "distribution" which § 115(a) presupposes. It was not a distribution for the purposes of the Parent's business but only in order to escape a tax and such a "distribution" is not among those contemplated in the section. * * * Since the proceeds of the sale were in any event to reach the same treasury, it was altogether irrelevant that the title to the shares passed from the Parent and not from the taxpayer. The doctrine of *Gregory v. Helvering, supra*, which we here hold to be controlling, is not limited to cases of corporate reorganizations. It has a much wider scope; it means that in construing words of a tax statute which describe commercial or industrial transactions we are to undertand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation.

The Court of Appeals in that case reversed the decision of the Tax Court and held that there was no "dividend" within the meaning of Section 115(a) and that in consequence the corporation was taxable on gains resulting from the sale of the property notwithstanding the fact that legal title to the property had been conveyed to its sole stockholder and the latter in turn completed the formalities of the sale and received the proceeds directly from the purchaser. On the same basis the decision of the District Court in the instant case should, we submit, be reversed by this Court since it demonstrates the error of the District Court's conclusion that the sole desire to reduce taxes would not render the transaction invalid. (R. 17.)

Similarly in *Commissioner v. First State Bank*, 168 F. 2d 1004 (C.A. 5th), certiorari denied, 335 U.S. 867, the corporation declared a dividend in kind of notes

it had previously charged off as worthless. The notes were not distributed to the stockholders but were turned over to the vice-president of the bank who made the collections and distributed the proceeds to the stockholders. The Tax Court held that by reason of the declaration of the dividend in kind, the collections on the notes did not represent taxable income to the corporation. The Court of Appeals for the Fifth Circuit, however, viewed the situation oppositely, reversed the Tax Court and held that the income was taxable to the corporation. In that case the Court of Appeals said (p. 1011):

> * * * there was in reality nothing divided as a dividend to the stockholders till the money was paid them, and in reality the bank made the recoveries * * *.

We believe this same observation is germane to the instant case. The dividend apples were not delivered to the stockholders nor segregated from other apples owned by the corporation and the corporation accepted the orders for the apples which it already had on hand and marketed them as though it had full title. The facts in this case bring them within the rule of the *First State Bank* case, *supra*, and distinguishes it from *General Utilities Co. v. Helvering*, 296 U.S. 200, since in that case the property was physically transferred to the stockholders.

We believe that despite the form in which it was cast, the substance of the transaction, viewed as a whole, was merely a sale of the apples by the corporation and the subsequent distribution of the net proceeds to the stockholders. The authorities we have cited and rely upon uniformly hold that tax consequences cannot be avoided by transforming a sale by one person into a sale by another by using the latter

as a conduit for the passage of title. The present case is even stronger in support of that position than is the usual case in which the principle is invoked because in this case the sales were actually made and consummated by the corporation without any intention to, or the actual, transfer of the physical possession or inteerst in the property to the stockholders.

B. *The transaction represented an anticipatory assignment of income.*

Irrespective of whether the declaration of the dividend in kind was devoid of reality and a sham, the rule is now well established that where a dividend in kind represents an assigment of future income, that income is taxable to the corporation when collected by the stockholders. *Commissioner v. First State Bank, supra; Commissioner v. First State Bank of Matador,* 172 F. 2d 224 (C.A. 5th); and *Rudco Oil & Gas Co. v. United States,* 82 Supp. 746 (C.Cls.) Those decisions proceed on the doctrine of *Lucas v. Earl,* 281 U.S. 111; *Helvering v. Horst,* 311 U.S. 112, and *Harrison v. Schaffner,* 312 U. S. 579, that an anticipatory assignment of income will not serve to relieve the assignor of that income.

The rule of those cases finds appropriate application in this case. The apples in the corporation's hands without regard to the dividend in kind were more than merely potential income because, as we have pointed out, the corporation had but to accept already existent orders for them at the price fixed by O.P.A. prior to the declaration of the dividend. In fact the dividend and the contract of February 28, 1944, would not, apparently, have been made had that not been true. The income from the sale was, therefore, definitely realizable and known whether or not the corporation had actually committed itself to sell

the apples at the time the divided was declared. Thus clearly the declaration of a dividend consisting of apples was in fact and in effect an anticipatory assignment of the proceeds from the sale of apples. In this posture the instant case appears to be on all fours with and not distinguishable from *Commissioner v. First State Bank, supra,* and the significance of the court's statement in *Commissioner v. Transport Trad. & Term. Corp., supra,* quoted above is even more apparent.

CONCLUSION

The decision of the District Court should be reversed.

Respectfully submitted,

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HARVEY ERICKSON,
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Assistant United States Attorney.

April, 1951.

APPENDIX

Supplement to the printed record:

Among the documents filed in this Court was the Designation of the portion of the Record to be printed. That designation specified that the entire record designated as the record on appeal was to be printed and that that designation itself was to be printed. Included in the designated record on appeal was the minutes of the meeting of February 28, 1944, Exhibit 1a (R. 30), and the contract of that date between the stockholders and the corporation, Exhibit 2 (R. 33). Both of these exhibits and the Designation of the portion of the record to be printed were omitted in the printed record and to correct that error they are herein included as a supplement to the printed record. They are as follows:

IN THE UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

UNITED STATES OF AMERICA, Appellant, v. P. J. LYNCH, Appellee and Cross-Appellant	No..... DESIGNATION OF THE PORTIONS OF RECORD TO BE PRINTED

Comes now the appellant and designates the following portions of the record to be printed in conformity with the rules of this court:

1. The entire record designated as the record on appeal pursuant to Rule 75(a) of Civil Procedure

2. Appellant's Statement of Points pursuant to Rule 19(6) of the Ninth Circuit
3. Appellant's Designation of Contents of Record to be printed.

DATED this 9th day of January, 1951.

HARVEY ERICKSON,
United States Attorney
FRANK R. FREEMAN,
Assistant United States Attorney
Attorneys for Appellant.

Exhibit 1a

WASHINGTON FRUIT & PRODUCE COMPANY

Minutes of Meeting of Trustees of
WASHINGTON FRUIT & PRODUCE COMPANY

A meeting of the Trustees of the Washington Fruit & Produce Company was held February 28, 1944, at ten o'clock A.M. in the offices of the Company.

This meeting was called by the president for the purpose of electing a secretary and treasurer, and for the purpose of considering the declaring and payment of a dividend.

At this meeting all of the Trustees, who owned all the stock of the Company, were present, Trustees and Stockholders being named as follows:

Fred B. Plath
P. J. Lynch
John M. Bloxom

Mr. Lynch moved that Mr. John M. Bloxom be elected secretary and treasurer of the Company. This motion was seconded by Mr. Plath and carried.

It was moved by Mr. Plath and seconded by Mr. Lynch, and carried, that Mr. Bloxom be authorized to sign the Company's checks.

Mr. Plath then moved that the Company declare a dividend of 21,977 boxes of field run Winesaps, for which the Company has paid $29,116.84, consisting of the following lots on hand at this time:

Lot	Plath	Lynch	Bloxom	Total
Ashman	348	150	102	600
A. Brown	1980	852	580	3412
Foster Ranch	2376	1025	696	4097
Perry	604	260	177	1041

Quandt	3181	1372	933	5486
Tyrrell	1574	678	461	2713
Zirkle	1065	459	312	1836
Howe	496	214	145	855
Parker	1123	484	330	1937
	12747	5494	3736	21977

This amount shall be credited to the Stockholders in ratio to their stock holdings, namely: 12,747 boxes to F. B. Plath, 5494 boxes to P. J. Lynch and 3736 boxes to John M. Bloxom. The motion was seconded by Mr. Bloxom and carried.

Mr. Lynch moved and the motion was seconded by John M. Bloxom that the officers sign a certified copy of Corporate Resolution authorizing loans and that same be made part of these minutes. Motion was carried.

There being no further business for consideration, the meeting was adjourned.

s/s J. M. Bloxom
Secretary

Attest:

/s/ Fred B. Plath
President

Above minutes approved

/s/ P. J. Lynch
Trustee

Exhibit 2

WASHINGTON FRUIT & PRODUCE COMPANY

AGREEMENT

February 28, 1944.

On February 28, 1944, the following stockholders of the Washington Fruit & Produce Company received a dividend of 21,977 boxes, field-run Winesaps, listed in the minutes of a meeting of trustees and stockholders of the Company on that date.

It is agreed that the company shall store, prepare for market, and market these field-run Winesaps for the stockholders; and, to facilitate the handling of these apples, the stockholders agree to place their respective holdings of these field-run Winesaps in one pool for marketing purposes.

As these Winesaps are prepared for market and marketed, the Company will charge this pool with the storage, washing, sorting, etc., at the lowest rate made any other owner of apples in the Company's storage during the 1943-1944 season; and, when the net proceeds of the sale of this Winesap pool are determined, will divide said proceeds among the stockholders in the following percentages, which are the same percentages as the stockholders' interests appear in the field-run Winesaps placed in this pool: Fred B. Plath 58%, P. J. Lynch 25%, J. M. Bloxom 17%.

Washington Fruit & Produce Company

By /s/ *Fred B. Plath*, President

Stockholders: /s/ Fred B. Plath
/s/ P. J. Lynch
/s/ J. M. Bloxom

JMB:RW